

107TH CONGRESS  
1ST SESSION

# S. 1742

To prevent the crime of identity theft, mitigate the harm to individuals  
victimized by identity theft, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2001

Ms. CANTWELL introduced the following bill; which was read twice and  
referred to the Committee on the Judiciary

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## A BILL

To prevent the crime of identity theft, mitigate the harm  
to individuals victimized by identity theft, and for other  
purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Restore Your Identity  
5       Act of 2001”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the crime of identity theft is the fastest  
9       growing crime in the United States;

1           (2) the Federal Trade Commission reports that  
2           between March and June of 2001, the total number  
3           of identity theft victims in the Commission's Com-  
4           plaint Clearinghouse System, tallied from November  
5           1999, increased from 45,593 to 69,370;

6           (3) consumer inquiries and complaints to the  
7           Federal Trade Commission Identity Theft Hotline  
8           increased from 68,000 to over 97,000 over the same  
9           3-month period, and consumer calls into the Hotline  
10          increased in the same period from 1,800 calls per  
11          week to over 2,000;

12          (4) the Federal Trade Commission estimates  
13          that the call volume to the Identity Theft Hotline  
14          represents only 5 to 10 percent of the actual number  
15          of victims of identity theft;

16          (5) victims of identity theft often have extraor-  
17          dinary difficulty restoring their credit and regaining  
18          control of their identity because of the viral nature  
19          of identity theft;

20          (6) identity theft may be ruinous to the good  
21          name and credit of consumers whose identities are  
22          misappropriated, and victims of identity theft may  
23          be denied otherwise well-deserved credit, may have  
24          to spend enormous time, effort, and sums of money  
25          to remedy their circumstances, and may suffer ex-

1       treme emotional distress including deep depression  
2       founded in profound frustration as they address the  
3       array of problems that may arise as a result of iden-  
4       tity theft;

5           (7) victims are often required to contact numer-  
6       ous Federal, State, and local law enforcement agen-  
7       cies, consumer credit reporting agencies, and credi-  
8       tors over many years, as each event of fraud arises;

9           (8) the Government, business entities, and cred-  
10      it reporting agencies have a shared responsibility to  
11      assist identity theft victims, to mitigate the harm  
12      that results from fraud perpetrated in the victim's  
13      name;

14          (9) victims of identity theft need a nationally  
15      standardized means of—

16           (A) reporting identity theft to law enforce-  
17      ment, consumer credit reporting agencies, and  
18      business entities; and

19           (B) evidencing their true identity to busi-  
20      ness entities and credit reporting agencies;

21          (10) one of the greatest law enforcement chal-  
22      lenges posed by identity theft is that stolen identities  
23      are often used to perpetrate crimes in many dif-  
24      ferent localities in different States, and although  
25      identity theft is a Federal crime, most often, State

1 and local law enforcement agencies are responsible  
2 for investigating and prosecuting the crimes; and

3 (11) the Federal Government should assist  
4 State and local law enforcement agencies to effec-  
5 tively combat identity theft and the associated fraud.

6 **SEC. 3. DEFINITIONS.**

7 In this Act, the following definitions shall apply:

8 (1) BUSINESS ENTITY.—The term “business  
9 entity” means—

10 (A) a creditor, as that term is defined in  
11 section 103 of the Truth in Lending Act (15  
12 U.S.C. 1602);

13 (B) any financial information repository;

14 (C) any financial service provider; and

15 (D) any corporation, trust, partnership,  
16 sole proprietorship, or unincorporated associa-  
17 tion (including telecommunications, utilities,  
18 and other service providers).

19 (2) CONSUMER.—The term “consumer” means  
20 an individual.

21 (3) FINANCIAL INFORMATION.—The term “fi-  
22 nancial information” means information identifiable  
23 as relating to an individual consumer that concerns  
24 the amount and conditions of the assets, liabilities,  
25 or credit of the consumer, including—

1 (A) account numbers and balances;

2 (B) nonpublic personal information, as  
3 that term is defined in section 509 of the  
4 Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

5 (C) codes, passwords, social security num-  
6 bers, tax identification numbers, State identifier  
7 numbers issued by a State department of li-  
8 censing, and other information used for the  
9 purpose of account access or transaction initi-  
10 ation.

11 (4) FINANCIAL INFORMATION REPOSITORY.—

12 The term “financial information repository” means  
13 a person engaged in the business of providing serv-  
14 ices to consumers who have a credit, deposit, trust,  
15 stock, or other financial services account or relation-  
16 ship with that person.

17 (5) IDENTITY THEFT.—The term “identity  
18 theft” means an actual or potential violation of sec-  
19 tion 1028 of title 28, United States Code, or any  
20 other similar provision of Federal or State law.

21 (6) MEANS OF IDENTIFICATION.—The term  
22 “means of identification” has the meanings given  
23 the terms “identification document” and “means of  
24 identification” in section 1028 of title 18, United  
25 States Code.

1           (7) VICTIM.—The term “victim” means a con-  
 2           sumer whose means of identification or financial in-  
 3           formation has been used or transferred (or has been  
 4           alleged to have been used or transferred) without the  
 5           authority of that consumer with the intent to com-  
 6           mit, or to aid or abet, identity theft or any other vio-  
 7           lation of law.

8   **SEC. 4. IDENTITY THEFT TREATED AS RACKETEERING AC-**  
 9                           **TIVITY.**

10          Section 1961(1)(B) of title 18, United States Code,  
 11          is amended by inserting “, or any similar offense charge-  
 12          able under State law” after “identification documents”).

13   **SEC. 5. TREATMENT OF IDENTITY THEFT MITIGATION.**

14          (a) INFORMATION AVAILABLE TO VICTIMS.—

15               (1) IN GENERAL.—A business entity possessing  
 16          information relating to an identity theft, or who may  
 17          have entered into a transaction, provided credit,  
 18          products, goods, or services, accepted payment, or  
 19          otherwise done business with a person that has made  
 20          unauthorized use of the means of identification of  
 21          the victim, shall, not later than 10 days after receipt  
 22          of a written request by the victim, provide, without  
 23          charge, to the victim or to any Federal, State, or  
 24          local governing law enforcement agency or officer  
 25          specified by the victim copies of all related applica-

tion and transaction information and any information required pursuant to subsection (b).

(2) RULE OF CONSTRUCTION.—Nothing in this section requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law, except that any such provision of law that prohibits the disclosure of financial information to third parties shall not be used to deny disclosure of information to the victim under this section.

(b) VERIFICATION OF IDENTITY.—

(1) IN GENERAL.—Unless a business entity is otherwise able to verify the identity of a victim making a request under subsection (a)(1), the victim shall provide to the business entity as proof of positive identification, at the election of the business entity—

(A) a copy of a police report evidencing the claim of the victim of identity theft;

(B) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

(C) any affidavit of fact that is acceptable to the business entity for that purpose.

1       (c) LIMITATION ON LIABILITY.—No business entity  
 2 may be held liable for an action taken in good faith to  
 3 provide information under this section with respect to an  
 4 individual in connection with an identity theft to other fi-  
 5 nancial information repositories, financial service pro-  
 6 viders, merchants, law enforcement authorities, victims, or  
 7 any person alleging to be a victim, if—

8           (1) the business entity complies with subsection  
 9       (b); and

10          (2) such action was taken—

11           (A) for the purpose of identification and  
 12       prosecution of identity theft; or

13           (B) to assist a victim in recovery of fines,  
 14       restitution, rehabilitation of the credit of the  
 15       victim, or such other relief as may be appro-  
 16       priate.

17       (d) AUTHORITY TO DECLINE TO PROVIDE INFORMA-  
 18       TION.—A business entity may decline to provide informa-  
 19       tion pursuant to subsection (a) if, in the exercise of good  
 20       faith and reasonable judgment, the business entity believes  
 21       that—

22           (1) this section does not require disclosure of  
 23       the information; or



1           (2) the request for the information is based on  
 2           a misrepresentation of fact by the victim relevant to  
 3           the request for information.

4           (e) NO NEW RECORDKEEPING OBLIGATION.—Noth-  
 5           ing in this section creates an obligation on the part of a  
 6           business entity to retain or maintain information or  
 7           records that are not otherwise required to be retained or  
 8           maintained in the ordinary course of its business or under  
 9           other applicable law.

10   **SEC. 6. AMENDMENTS TO THE FAIR CREDIT REPORTING**  
 11                           **ACT.**

12           (a) CONSUMER REPORTING AGENCY BLOCKING OF  
 13           INFORMATION RESULTING FROM IDENTITY THEFT.—  
 14           Section 611 of the Fair Credit Reporting Act (15 U.S.C.  
 15           1681i) is amended by adding at the end the following:

16           “(e) BLOCK OF INFORMATION RESULTING FROM  
 17           IDENTITY THEFT.—

18                   “(1) BLOCK.—Not later than 30 days after the  
 19           date of receipt of proof of the identity of a consumer  
 20           and an official copy of a police report evidencing the  
 21           claim of the consumer of identity theft, a consumer  
 22           reporting agency shall permanently block the report-  
 23           ing of any information identified by the consumer in  
 24           the file of the consumer resulting from the identity

1 theft, so that the information cannot be reported,  
2 except as provided in paragraph (3).

3 “(2) NOTIFICATION.—A consumer reporting  
4 agency shall promptly notify the furnisher of infor-  
5 mation identified by the consumer under paragraph  
6 (1) that the information may be a result of identity  
7 theft, that a police report has been filed, that a  
8 block has been requested under this subsection, and  
9 the effective date of the block.

10 “(3) AUTHORITY TO DECLINE OR RESCIND.—

11 “(A) IN GENERAL.—A consumer reporting  
12 agency may decline to block, or may rescind  
13 any block, of consumer information under this  
14 subsection if—

15 “(i) in the exercise of good faith and  
16 reasonable judgment, the consumer report-  
17 ing agency believes that—

18 “(I) the information was blocked  
19 due to a misrepresentation of fact by  
20 the consumer relevant to the request  
21 to block; or

22 “(II) the consumer knowingly ob-  
23 tained possession of goods, services, or  
24 moneys as a result of the blocked  
25 transaction or transactions, or the

1 consumer should have known that the  
2 consumer obtained possession of  
3 goods, services, or moneys as a result  
4 of the blocked transaction or trans-  
5 actions; or

6 “(ii) the consumer agrees that the  
7 blocked information or portions of the  
8 blocked information were blocked in error.

9 “(B) NOTIFICATION TO CONSUMER.—If  
10 the block of information is declined or rescinded  
11 under this paragraph, the affected consumer  
12 shall be notified promptly, in the same manner  
13 as consumers are notified of the reinsertion of  
14 information pursuant to subsection (a)(5)(B).

15 “(C) SIGNIFICANCE OF BLOCK.—For pur-  
16 poses of this paragraph, the prior presence of  
17 blocked information in the file of a consumer is  
18 not evidence of whether the consumer knew or  
19 should have known that the consumer obtained  
20 possession of any goods, services, or monies as  
21 a result of the block.”.

22 (b) STATUTE OF LIMITATIONS.—Section 618 of the  
23 Fair Credit Reporting Act (15 U.S.C. 1681p) is amended  
24 by striking “jurisdiction” and all that follows through

1 “years after” and inserting “jurisdiction, not later than  
2 2 years after”.

3 **SEC. 7. COMMISSION STUDY OF COORDINATION BETWEEN**  
4 **FEDERAL, STATE, AND LOCAL AUTHORITIES**  
5 **IN ENFORCING IDENTITY THEFT LAWS.**

6 (a) MEMBERSHIP.—Section 2(b) of the Internet  
7 False Identification Prevention Act of 2000 (18 U.S.C.  
8 1028 note) is amended by inserting “the Postmaster Gen-  
9 eral, the Commissioner of the United States Customs  
10 Service,” after “Trade Commissioner”.

11 (b) CONSULTATION.—Section 2 of the Internet False  
12 Identification Prevention Act of 2000 (18 U.S.C. 1028  
13 note) is amended—

14 (1) by redesignating subsection (d) as sub-  
15 section (e); and

16 (2) by inserting after subsection (c) the fol-  
17 lowing:

18 “(d) CONSULTATION.—The coordinating committee  
19 shall consult with interested parties, including State and  
20 local law enforcement agencies, State attorneys general,  
21 representatives of business entities (as that term is defined  
22 in section 4 of the Restore Your Identity Act of 2001),  
23 including telecommunications and utility companies, and  
24 organizations representing consumers.”.

1       (c) REPORT CONTENTS.—Section 2(e) of the Internet  
2 False Identification Prevention Act of 2000 (18 U.S.C.  
3 1028 note) (as redesignated by this section) is amended—

4           (1) in subparagraph (E), by striking “and” at  
5 the end; and

6           (2) by striking subparagraph (F) and inserting  
7 the following:

8           “(F) a comprehensive description of Fed-  
9 eral assistance to address identity theft pro-  
10 vided to State and local law enforcement agen-  
11 cies;

12           “(G) a comprehensive description of co-  
13 ordination activities between Federal, State,  
14 and local law enforcement agencies in regard to  
15 addressing identity theft and recommendations,  
16 if any, for legislative changes that could facili-  
17 tate more effective investigation and prosecu-  
18 tion of the creation and distribution of false  
19 identification documents;

20           “(H) a comprehensive description of how  
21 the Federal Government can best provide to  
22 State and local law enforcement agencies timely  
23 and current information regarding terrorists or  
24 terrorist activity where such information specifi-  
25 cally relates to identity theft; and

“(I) recommendations, if any, for legislative or administrative changes that would—

“(i) facilitate more effective investigation and prosecution of cases involving identity theft;

“(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies;

“(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of the person; and

“(iv) if deemed appropriate, provide for the establishment of a Federal identity theft and false identification office or agency.”.

**SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is pro-

hibited under this Act or under any amendment made by this Act, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act or the amendments made by this Act;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General of the United States—

(i) written notice of the action; and

(ii) a copy of the complaint for the action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State

1 under this subsection, if that attorney gen-  
2 eral determines that it is not feasible to  
3 provide the notice described in subpara-  
4 graph (A) before the filing of the action.

5 (ii) NOTIFICATION.—In an action de-  
6 scribed in clause (i), the attorney general  
7 of a State shall provide notice and a copy  
8 of the complaint to the Attorney General  
9 of the United States at the same time as  
10 the action is filed.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice of an ac-  
13 tion under subsection (a)(2), the Attorney General  
14 of the United States shall have the right to intervene  
15 in that action.

16 (2) EFFECT OF INTERVENTION.—If the Attor-  
17 ney General of the United States intervenes in an  
18 action under subsection (a), the Attorney General  
19 shall have the right to be heard with respect to any  
20 matter that arises in that action.

21 (c) CONSTRUCTION.—For purposes of bringing any  
22 civil action under subsection (a), nothing in this Act or  
23 the amendments made by this Act shall be construed to  
24 prevent an attorney general of a State from exercising the



1 powers conferred on such attorney general by the laws of  
2 that State—

3 (1) to conduct investigations;

4 (2) to administer oaths or affirmations; or

5 (3) to compel the attendance of witnesses or the  
6 production of documentary and other evidence.

7 (d) ACTIONS BY THE ATTORNEY GENERAL OF THE  
8 UNITED STATES.—In any case in which an action is insti-  
9 tuted by or on behalf of the Attorney General of the  
10 United States for violation of a practice that is prohibited  
11 under this Act or under any amendment made by this Act,  
12 no State may, during the pendency of that action, institute  
13 an action under subsection (a) against any defendant  
14 named in the complaint in that action for violation of that  
15 practice.

16 (e) VENUE; SERVICE OF PROCESS.—

17 (1) VENUE.—Any action brought under sub-  
18 section (a) may be brought in the district court of  
19 the United States that meets applicable require-  
20 ments relating to venue under section 1391 of title  
21 28, United States Code.

22 (2) SERVICE OF PROCESS.—In an action  
23 brought under subsection (a), process may be served  
24 in any district in which the defendant—

25 (A) is an inhabitant; or

1 (B) may be found.

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